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Department of Rev. & Agri.

OFFICE Board of Revenue

STATION Madras.

No No. 29

Dated 5-1-38

DESPATCHED
7 - JAN 1938

Pages in the file

(SUBJECT.)

Suits. (S. Kanara). Kanara DM.C. Advances Loans. Tho fam rvje. Prov circumvallation Report on. Sale thereof

RL 97 F 5870

Ref.A3.No. 5978-37. South Kanara Collector's Office,

Mangalore, dated 10 - 12 - 1937.

From

M.R.Ry.. Rao Bahadur M.V.Vellodi, Avl., B.A.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue and Settlement,

M a d r a s.

Sir,

Suits - Mangalore - District Munsif's court - O.S. No. 357-37 - Advances - Loans - Thokur village - Prior encumbrance - suit for recovery.

I enclose a copy of the plaint in the above suit, from para 3 of which, it is seen that the plaintiffs executed in favour of the 1st defendant, a sale deed in respect of certain immoveable property for Rs. 700/- of which a sum of Rs. 200/- was left with the ------ purchaser on the charge of the property thus sold. The suit purports to be for the recovery of this amount. The Government have been impleaded as a party, because of a Takkavi loan of Rs. 300/- given to the 1st defendant under the provisions of the Land Improvement Loans Act on the security of a portion of the property, thus charged.

2. The loan in question was granted by the Tahsildar of Mangalore in his L.O.No. 52/1346 in March last for the purpose of constructing a kattapuni (bund) in S.Nos.68/3B & 7B of Thokur village on the collateral security of S.No.66/20 and 68/4A, 4C, 5, 9 and 8 B of the same village, which the borrower (1st defendant) had purchased from the plaintiffs. At the time of the grant of the loan, the existence of the charge in question was not known, nor did the encumbrance certificate produced by the borrower show that such a charge existed. It only mentioned, as charges on the property, an indemnity

bond in favour of one Hammade Beari for a sum not exceeding Rs. 650/- and a mortgage deed in favour of one Pokabba Beari for Rs. 200/-. The Revenue Inspector having also reported that there was a total charge of only Rs. 300/- on the collateral security property, which was valued at Rs. 1000/-, the loan in question was granted.

3. At the time of the enquiry into the suit notice, sent by the plaintiffs, the existence of the prior encumbrance in question came to light, but the Tahsildar reported that the properties given as security would be sufficient to cover both the loan amount and the amount due to the plaintiffs. Further according to the provisions of the Land Improvement Loans Act under which the loan had been granted, the sale of the lands benefitted by the loan will have the effect of extinguishing prior encumbrances. In these circumstances the suit notice was recorded. All the same, the Tahsildar was directed to take immediate steps for the summary recovery of the loan amount, if by 23-9-37, the loan work was not completed. The work not having been completed, action was taken for the summary recovery of the amount and the Tahsildar, has so far collected Rs. 24-10-0 of which Rs. 12-1-0 represents interest and penal interest up to the end of November last and Rs. 12-9-0 represents part payment of principal. There is thus a balance of Rs. 287-7-0 under principal, on which penal interest is leviable from 1-12-37.

4. In view of the Government Pleader's opinion expressed in his letters Ref.Nos. A. 625-37 dated 26-11-37 and 637-37 dated 2-12-37 (copies enclosed), I have directed the Tahsildar to stop further action with regard to the summary recovery of the loan. I enclose a copy of the draft written statement prepared by the Government Pleader and slightly amended by me and request that the Board may be pleased to sanction the defence of the suit and approve the draft written statement.

5. The plaint in this case was filed on 25-10-37. I received the summons on 9-11-37 and the suit stood posted to 4-12-37. As the three months' time allowed by rule 5 of Order XXVII of the Civil Procedure Code was not allowed by the court, I asked the Government Pleader to take an adjournment and the suit now stands adjourned to 20-1-1938. The connected records detailed in the margin* are enclosed for reference.

1. Collector's file D.Dis. No.3626-37.
2. Mangalore Taluk office file L.O.No. 52/1346.
3. do. C.No. 7313-37.

For Collector. 11-12-37

11.12.37

IN THE COURT OF THE DISTRICT MUNSIFF OF MANGALORE.

Original Suit No.357 of 1937.

ween:-

1. Gopalkrishnaya
2. Sanjivamma — Plaintiffs.

and

1. Savu Beary
2. Hammade Beary
3. Pokabba Beary
4. The Secretary of State for India in Council, represented by the Collector of South Kanara. — Defendants.
5. Hammabba Beary
6. Muse Beary
7. Maniga Hengsu
8. Guruva

Plaint under order 7 rule 1 and 2 of C.P.C.

1. That the 1st plaintiff is the son of Narnappaya and 2nd plaintiff is the wife of 1st plaintiff, both reside in Kenjar village Mangalore Taluk. Address for service of all notice and process is as above.

2. That the 1st defendant is the son of Ismali Beary 2nd defendant is the son of Kayali Hasane Beary, 3rd defendant is the son of Jokatte Kadri Beary 4th defendant is the ---- Secretary of State for India in Council represented by the Collector of South Kanara, Mangalore town, 5th defendant is the son of Kayali Idine Beary, 6th defendant is the son of Bavukada Seke Beary, 7th defendant is the daugnter of Boggi Hengsu and 8th defendant is the son of Pachu Hengsu. All the defendants except 4th defendant reside in Thokur village, Pejavar Magne, Mangalore Taluk. Address for service of all notice and process is as above.

3. That on 6-6-1935, plaintiffs executed a registered sale deed in favour of 1st defendant in respect of the undermentioned A Schedule immovable properties for Rs.700/-

of the consideration a sum of Rs.200/- was reserved with 1st defendant payable on the charge of the A Schedule properties, with interest at 12½% per annum by the 5th June 1938. The deed provides for payment of annual interest by the 5th June of every year and that on default of payment of the interest regularly by any of the due dates, the principal also is payable at once, irrespective of the aforementioned dated and that all such interest principal etc. are payable on the charge of the property as also its income. The deed a registration copy of sale deed which is produced herewith may be read as part of the plaint. The original sale deed is with 1st defendant.

4. The 1st defendant who accepted the sale deed and dealt with the property as owner, has failed to pay any portion of the interest or principal ever since the date of the sale deed. A registered notice sent to 1st defendant claiming the full principal, arrears of interest etc. as per terms of the deed has been accepted by him without demur.

5. Defendants 2 to 8 seem to be subsequent encumbrancers and alienees and the same not being valid and binding against plaintiffs' claim, they have been impleaded to have a sale free of their claims, in default of payment. Notice under Section 80 of the C.P.C. has been given to the 4th defendant and delivered to him on 29.7.37 and no reply has been given by 4th defendant to the said notice.

6. The cause of action for the suit arose on 5.6.1936 and since, in Thokur village within the jurisdiction of this Court.

7. Plaintiffs estimate value of relief claimed at Rs.264-6-6 under Section 7(1) and a court fee of Rs.30-5-0 has been paid.

8. Plaintiffs pray for judgment and decree against

defendants for the following:-

a) Directing defendants to pay the sum of Rs 264-6-6 as specified in schedule B hereto, together with future interest at ~~6%~~ 12½% per annum and costs of the suit with interest within a date to be fixed by the Court and on default directing sale of the A schedule properties free from the claims of defendants 2 to 8 and payment of sale proceeds to plaintiff, in pro-tanto satisfaction of plaintiff's claim, this relief is valued at Rs 264 6 6

b) Reserving liberty to plaintiffs to apply for a personal decree against 1st defendant for the balance)

c) For such other and further reliefs as this Court deems fit to grant.)

264 6 0

Schedule A - Description of property.

మంగళగిరి తొట్టి మంగళగిరి పట్టి తిప్పుశిట్టనకి నీటిద కీళావర మాగాణి తోట్లగిరి గ్రామద బాబ్బు.

పట్టీ నంబ్బ	ప.తి. నంబ్బ	శిం	విస్తీర్ణ	శిటీ
66	20	మంజ	0 - 68	1 - 6 - .
68	2	తి	0 - 10	0 - 8 - .
68	3	తి	1 - 84	9 - 3 - .
68	4	తి	0 - 47	1 - 7 - .
68	5	తి	0 - 21	1 - 1 - .
68	7	తి	0 - 47	. - 15 - .
68	8 కొట్టి దక్షిణం పక్కన అంతా	బాగ్యతు	0 - 66	2 - 1 - .
68	9	మంజ	1 - 13	2 - 4 - .

ఈ ఎల్లా పొలగళు ఇదక్కప్పిద బాగ్యతు విశిష్ట మంచాలుట్టుగళు దక్షిణదళు జలశ్రయగళు ముతలాద నీరు పదాతి దక్షిణ యుట్టి మేలుబు మాబు ఎల్లా దక్షిణ కాతి ఇరువ నవాబ్ది లిస్ట్. న.నం 68/8 బాగ్యతు కొట్టి దక్షిణం పక్కన అంతా 66 నేంబ్బర గతి యుంతి శేంపు వరెగె పడ ఇద్ద పట్టి తిపిటిన బాబ్బు స్పష్ట బరసు దరి ఈ ఎల్లా ఇరువ స్పష్ట

Schedule B

a)	Principal sum due	Rs	200	0 0
b)	Interest thereon at 12½% from 5-6-1935 up to date.		59	11 6
c)	Cost of encumbrance certificate		3	2 0
d)	Cost of lawyer's notice		1	9 0
	Total Rs		264	6 6

/True copy/

Mangalore dated 25-10-1937.

Sd/- P, Sanjiva Rao

Vakil for Plaintiffs.

/True copy/

For Collector. 19-11-37

19.11.37

IN THE COURT OF THE DISTRICT MUNSIF OF MANGALORE.

O.S.357/37.

Between:-

Gopalakrishnayya and another — Plaintiffs.

and

Savu Beary and others. — Defendants.

Written statement of the 4th defendant under Order VIII Rule I C.P.C.

The abovenamed defendant begs to state as follows:-

1. That the suit is unsustainable in law and on facts as against this defendant.

2. That the suit filed as against the Secretary of State for India in Council is against the provisions of Law and not sustainable.

3. That the notice alleged to have been given under Section 80 C.P.C. is further defective and not in accordance with law.

4. This defendant puts plaintiffs to strict proof of the allegations contained in paragraph 3 of the plaint, and that the plaint claimed amount is still outstanding and due to the plaintiffs.

5. This defendant submits that for the purpose of constructing a kattapuni in S.No.68/3B and 68/7B of Thokur village the 1st defendant borrowed a sum of three hundred rupees from this defendant under the provisions of the Land Improvement Loans Act and on 23.3.1937 executed a security bond in favour of this defendant charging the properties described in schedule A to this statement for the due repayment of the said loan and interest thereon. A sum of Rs.287:7.0 together with future inter interest from 1.12.1937 is due to this defendant or to his successor the Government of Madras and particulars thereof are given in schedule B hereto.

6. This defendant submits that under the provisions of the Land Improvement Loans Act, this defendant is entitled to a first charge for the sum due to him on the properties described in

Schedule A hereto. The Plaintiff is not entitled to have the plaint A schedule properties sold free of the claim of this defendant. The plaintiff is bound under law to sell the said properties subject to the claim under the loan advanced by this defendant under the Land Improvement Loans Act.

7. As the charge in favour of this defendant is a first charge on the properties he was not a necessary party to this suit.

8. This defendant submits that the rights of this defendant or the Government of Madras to recover the loan from out of the property for the benefit of which the loan had been granted as if they were arrears of Revenue due in respect of that land under Section 7(1)(c) of the Land --- Improvement Loans Act of 1883 should be expressly reserved.

9. Under any circumstances, the property charged in favour of this defendant may be sold last and only in case the plaintiff is not able to recover the amount by the sale of the other properties.

10. In case it is to be held that this defendant is not entitled to priority this defendant submits that out of the amount realised by the sale of the plaint properties and after satisfaction of the plaint claim, the surplus sale proceeds may be paid over to this defendant in satisfaction of the amounts due to this defendant.

Prays therefore that the suit against this defendant may be dismissed with costs.

Schedule A.

Property situated in 62 of Thokur village, Mangalore Taluk, Mangalore Sub Registration District, South Kanara District.

Survey No.	Sub Division No.	Nisam.	Extent.	Assessment.
68	8B	Dry	0.66	2-4-0
66	20	Wet	0.68	1-9-0
68	4A	Do.	0.17	0-9-0
	4C	Do.	0.25	0.13.0
	5	Do.	0.21	1-3-0
	9	Do.	1-13	2-9-0

Schedule B.

Statement showing the particulars of the amounts due in respect of the loan granted to the 1st defendant in L.D.No.52/1346 on the file of the Tahsildar of Mangalore.

		Rs. A. P.
(1)	Principal of the loan.	300- 0-0
(2)	Add interest on item (1) @ 5½% from 23.3.37 to 31.10.37.	8- 4-0
(3)	Total.	308- 4-0
(4)	Penal interest on item (3) for October 37 at one anna for every ten rupees per mensem.	1-15-0
(5)	Total.	310- 3-0
(6)	Deduct amount of interest recovered on 19.10.37.	4- 0-0
(7)	Balance.	306- 3-0
(8)	Add penal interest for November 37.	1-14-0
(9)	Total.	308- 1-0
(10)	Deduct amount of interest, penal interest and part payment of principal collected on 27.11.37.	20-10-0
(11)	Net amount remaining to be collected.	287- 7-0

Fuyture penal interest on item 11 is also due from 1.12.37 up to the date of payment.

Sd/- M.V.Vellodi,

10.12.37.

Collector.

(True copy)

For Collector. 11.12.37

11.12.37

Letter-from M.R.Ry. K. Sadashiva Rao, Avl., B.A.,M.L.
Government Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 26.11.1937.
No.-Ref.No.A.625/37.

******

Suits - Mangalore District Munsif's Court - O.S.No. 357/37 - Draft written statement.

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Ref.A3.No.5978/37, dated 18.11.1937.

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I have prepared the necessary draft written statement to be filed on behalf of the 4th defendant. So far as the loan under the Land Improvement Loans Act, it will be a first charge on the property for the improvement of which the loan was advanced. As such the Government being a prior charge-holder was an unnecessary party to the suit. But as there is the allegation that the Government loan is subsequent to the plaint mortgage and must be postponed to it, the suit will have to be defended. Any action taken by the Government for the recovery thereof by the ordinary process will be affected by "Lespendens."

2. The amount due at present up to the date of the filing of the statement will have to be calculated and shown as schedule B of the written statement with particulars.

3. The papers sent to me are herewith returned.

(True Copy)

For Collector. 11.12.37

11.12.37

Letter-from M.R.Ry. K. Sadashiva Rao, Avl., B.A.,M.L.,
Government Pleader, Mangalore.
To-the Collector of South Kanara.
Dated-Mangalore, 2.12.1937.
No.-Ref.No.A.637/37.

******

Suits - Mangalore District Munsif's Court - O.S.No. 357/37 - Loans - Mangalore Taluk - Thokur village - Prior encumbrance - suit for recovery.

******

Reference:- Your Ref.A3.No.5978/37, dated 30.11.1937.

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I would consider it advisable not to take any action out of Court to recover the loan amount by summary process so long as the suit is pending trial. To avoid further complications, the Tahsildar may be asked not to take further action in the matter.

I shall request the Court for an adjournment on 4th December 1937 and shall let you know the result.

(True Copy)

For Collector. 11-12-37

11-12-37

Suits. (S. Kanara). Mangalore Dist.
Advances. Loans. Khotaw rgs.
Prior encumbrance. Defence.
Sanctioned.

Read

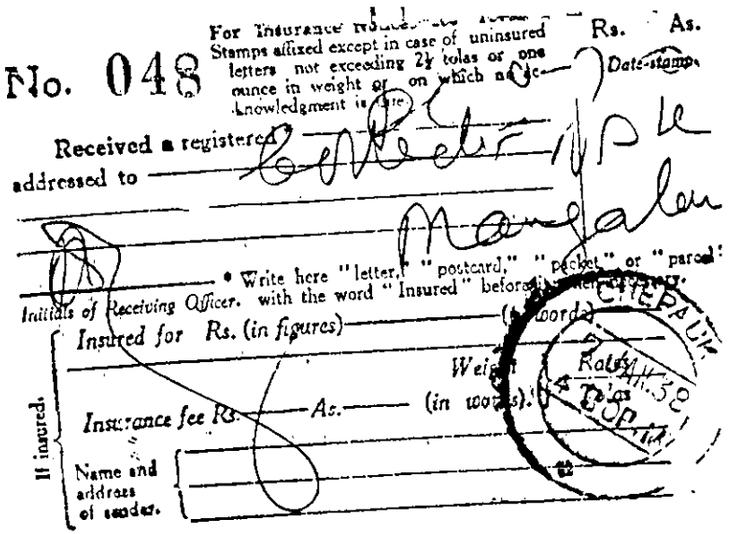
Letter from the Collr of S. Kanara
No A3. 5478-37 dt 10-12-37. } G.

Res. 29 (Misc) 5.1.38

The Board sanctions the defence of the suit and approves the draft written Statement submitted by the Collr subject to the deletion of paragraph 10 of the Statement.

2. The Collr is requested to consider the desirability of prosecuting the borrower for having given a false declaration regarding prior encumbrances on the land and to take due notice of the conduct of the V.O.s. and the supervising Officers in having failed to bring the fact of the previous encumbrance to the notice of their Superiors

HMS. 4/1/38
4/1/38
4/1/38


No. 048

For Insurance [illegible] Rs. As.
Stamps affixed except in case of uninsured letters not exceeding 2½ tolas or one ounce in weight or on which no [illegible] Date-stamp.
Acknowledgment is [illegible]

Received a registered [illegible]
addressed to [illegible]

* Write here "letter," "postcard," "packet" or "parcel" with the word "Insured" before it [illegible]

Initials of Receiving Officer.

If insured.
Insured for Rs. (in figures) (in words)
Weight
Insurance fee Rs. As. (in words).
Name and address of sender.

CHEPAUK
Rate
Dep

Suits - (S. Kanara) - Mangalore - Advances - Loans - Thothur village - Prior encumbrance - Recovery - O.S. 357/37 - Defence

F 6970/37 fop 1-3 cf.

To A.S.

Please see the letter from the Collector of South Kanara at fop 1-3 cf. It deals with the facts of the case in detail.

2. The facts whether out of the consideration of Rs 700, a sum of Rs 200 was reserved with the 1st defendant (ie) the borrower is being questioned. The loan was granted under the L.I.A Act and hence the security is therefore free from encumbrances. The G.P. is of opinion that further action towards for the realisation of the arrears should not be taken pending the decision of the suit. The Collr has accordingly directed the Taluk to stop further action. As the Government is a prior charge holder, the suit is liable to be dismissed. In the circumstances reported by the Collr, the Board may direct the defence of the suit and approve the draft written statement submitted by the Collector. In view of the fact that the rights of the Govt are protected under Section 7 of the L.I. Act, it is for consideration whether paras 9 and 10 in the draft written statement submitted by the Collector

are reallyne ecessar

20/21 XII 37 24-12-37

Para 9 of the N.I. may stand but para 10 may be omitted.

The Coll may be asked to consider the desirability of prosecuting the borrower for having given a false declaration re. prior encumbrances the land and to take on notice of the conduct of the Ins and the enquiring officer in having failed to bring the said encumbrance to the notice of the Superiors.

23/12/37

TO AS

Draft Submitted

4.1.38